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IN THE  
**SUPREME COURT OF THE UNITED STATES**  
OCTOBER TERM 1940

CITY OF INDIANAPOLIS, et al.,  
*Petitioners,*

vs.

THE CHASE NATIONAL BANK OF THE  
CITY OF NEW YORK, Trustees, etc., et al.,  
*Respondents.*

No. 421

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CITY OF INDIANAPOLIS, et al.,  
*Petitioners,*

vs.

THE CHASE NATIONAL BANK OF THE  
CITY OF NEW YORK, Trustee, etc., et al.,  
*Respondents.*

No. 422

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**BRIEF OF RESPONDENT, CITIZENS GAS COMPANY  
OF INDIANAPOLIS, UPON PETITION  
FOR WRIT OF CERTIORARI**

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**THE OPINION OF THE COURT BELOW**

The opinion of the Circuit Court of Appeals is reported  
in 113 Federal (2nd) 217.

## STATEMENT OF THE CASE

The petitioners' statement of facts should be supplemented in the following particulars:

(1) Citizens Gas\* was a quasi-public corporation organized for the purpose of acting as the original Trustee of a public charitable trust created for the benefit of the gas users of the City. (I R. 246, 250.) The Franchise Ordinance and the Articles of Incorporation (I R. 81) constituted the trust instruments and defined the powers and duties of Citizens Gas.

*Todd v. Citizens Gas Company, et al*, 46 Federal (2nd) 855 (C. C. A. 7).

(2) Such trust instruments provided that upon satisfaction of the claims of stockholders, the property of Citizens Gas should be conveyed to the City subject to all the legal obligations of the Company, and that thereafter Citizens Gas should be wound up (I R. 84, 85, 98, 115).

(3) During its trusteeship, Citizens Gas entered into the lease with Indianapolis Gas (I R. 51-80), pursuant to the authority granted by the statutes of the State of Indiana then in force. Upon joint petition of both parties the lease was approved by the Public Service Commission of the State of Indiana (I R. 116-122). It has been stipulated that the surrender of the franchise and the acceptance of an indeterminate permit under the Public Service Commission Law of Indiana did not have the effect of modifying or rendering nugatory the terms of the Franchise in so

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\* Throughout this brief the parties will be referred to by the appellations used by Petitioners in their petition and brief.

far as they created a Public Charitable Trust and defined the terms and conditions thereof and the rights, duties and liabilities of Citizens Gas as original trustee, of the City as successor trustee, and of the inhabitants of the City as the beneficiaries of the trust (II R. 622).

(4) Citizens Gas continued in possession and operated the leased property until September 9, 1935, and fully performed the rental covenants of the lease (II R. 627-628).

(5) Prior to September 9, 1935, the claims of stockholders of Citizens Gas had been completely satisfied (II R. 634), and the authority and duty of Citizens Gas to convey and transfer all of its property to the City had been finally adjudicated (*Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (C. C. A. 7) ).

(6) Thereupon, on September 9, 1935, Citizens Gas conveyed and transferred to the City all of its property subject to all outstanding obligations of the Company, and otherwise in strict accordance with the terms and conditions of the trust instruments (I R. 122, 127; III R. 833, 835). The City reserved its right to contest the validity of the lease (I R. 202-204, II R. 468). After September 9, 1935, Citizens Gas owned and held no property of any description and engaged in no business activity (II R. 466).

## ARGUMENT

The primary controversy in this litigation is whether the City and the property conveyed to it by Citizens Gas are liable under the lease for the remainder of the term of ninety-nine years. Throughout, Citizens Gas has asserted that it has no interest in that primary controversy and has adopted a completely neutral position with reference thereto. Citizens Gas contends that whether or not the City and the property are liable under the lease, Citizens Gas has fully and lawfully performed its duties as Trustee of the Public Charitable Trust and has no further obligation to any person.

Furthermore, Citizens Gas has never denied its power and authority to bind itself as Trustee and the trust property for the term of its trusteeship. It has always recognized the validity of the lease during all the time it had the power and authority to operate as a public utility, and it fully performed the lease covenants during that period of time (II R. 627-628).

In so far as the propriety of the acts of Citizens Gas is in question, the essential factors which define the rights and duties of Citizens Gas are as follows:

(1) No party has questioned the validity of the Public Charitable Trust as created and defined in the Franchise Ordinance and the Charter of Citizens Gas (I R. 233, 242, 246, 250). This had been adjudicated prior to the conveyance to the City (*Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (C. C. A. 7); *Williams v. Citizens Gas Company, et al.*, 206 Indiana 448, 188 N. E. 212).

(2) The terms and conditions of the Public Charitable Trust defined the powers and duties of Citizens Gas. As stated by the Court in *Todd v. Citizens Gas Company, et al.*, 46 Federal (2nd) 855 (865) (C. C. A. 7): "Provisions for the protection of the public interests were properly included in its charter, and are binding upon its stockholders and directors, who must act in accordance therewith until they are legally abrogated or altered."

(3) Both Indianapolis Gas and the purchasers of its bonds from Citizens Gas had full knowledge of the terms and conditions of the Public Charitable Trust, and the obligation of Citizens Gas to convey all of its property to the City and thereafter wind up its affairs (I R. 62; II R. 583-586). Moreover, Indianapolis Gas was notified of the contemplated transfer and of the City's desire to contest the validity of the lease some time before the conveyance was made (III R. 836).

(4) Since Citizens Gas was a public utility as well as the original Trustee of the Public Charitable Trust, the lease in question was made pursuant to the authority of the Public Service Commission Law of Indiana and only after approval had been given by the Public Service Commission of Indiana (I R. 116-122).

(5) Prior to September 9, 1935, it had been adjudicated that neither the enactment of the Public Service Commission Law by the General Assembly of the State of Indiana nor the granting of an indeterminate permit thereunder to Citizens Gas had affected in any way the terms of the Franchise Ordinance in so far as they created the Public Charitable Trust and defined the terms and conditions thereof (*Todd v. Citizens Gas Company, et al.*, 46 Federal

(2nd) 855 (C. C. A. 7) ). Moreover all the parties hereto have conceded that fact (II R. 622).

(6) On September 9, 1935, after the complete satisfaction of the claims of stockholders of Citizens Gas, it conveyed all of its property of every kind to the City *subject* to the legal obligations of the Company. The conveyance and transfer was made in strict accordance with the provisions of the Franchise Ordinance and the Charter of Citizens Gas (I R. 122, 127; III R. 833, 835). Thus Citizens Gas completely carried out and performed its duties as Trustee of the Public Charitable Trust, and as provided in the Franchise Ordinance and its Charter (I R. 84, 85, 98, 115), Citizens Gas has no further duty or obligation except to wind up its affairs.

Throughout its corporate existence Citizens Gas has acted within its authority and duty both as the original Trustee of the Public Charitable Trust and as a public utility. It affirms the validity and binding effect of the lease during the period during which it had the authority and the ability to operate as a public utility in the City of Indianapolis. Citizens Gas also affirms the validity and binding effect of the terms and conditions of the Public Charitable Trust. Whether or not the City has any liability under the lease, it is clear that Citizens Gas has fully performed its duties and obligations and that its legal capacity to secure further performance of the lease covenants terminated on September 9, 1935.

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